

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DECLARATION OF JAMES
MAY IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**Note on Motion Calendar:
August 11, 2023**

Oral Argument Requested

I, James May, under penalty of perjury under the laws of the United States, state and
declare as follows:

1. I am one of the individual Defendants in the above captioned matter, one of the
Counter-Claimants in the above captioned matter, and have knowledge of the
facts stated herein.
2. I have technical training in both the operation of computers and the structure
and operation of computer software and am familiar with the technical issues
in this matter.
3. At all relevant times, I have owned and operated a personal computer at my
residence that I use for a variety of both business and private matters. On this
personal computer, I maintain a number of files and other data that are

1 personal, confidential and that I do not share with others. I am the author of
2 these personal and confidential files and claim copyrights in them. In
3 particular, I am the author of a program named, "reclasskernel64.sys," which is
4 an original work of authorship created by me.

5 4. I have maintained the "reclasskernel64.sys" on only my personal computer,
6 have never made it public, and the reclasskernel64.sys" file could only have
7 been obtained by others by accessing my personal computer and the files
8 maintained thereon.

9 5. On my personal computer are additional programs created and authored by
10 others, including all other randomly named .sys files not named reclass listed
11 in Bungie's document production control number, "BUNGIE_WDWA-
12 0000409XLXS." These additional programs, ending in the ".sys" suffix are
13 original works of authorship created by Phoenix Digital. As original works of
14 authorship created by Phoenix Digital, Phoenix Digital owns copyrights in
15 them.

16 6. To protect against unauthorized access to my personal and confidential files
17 and data, I use various passwords known only to me. In addition, I use a
18 firewall to protect against unauthorized access to my personal and confidential
19 computer files and data that is intended to and does function to deter attempts
20 by third parties to access my computer via the Internet.

21 7. I have reviewed "Exhibit B" (Dkt#63-2) to my counter-claim which I
22 understand is a document provided by Bungie during discovery in this matter
23 and that bears Bungie's document production control number,
24 "BUNGIE_WDWA-0000409XLXS." The data in "Column3" of this Bungie
25 document lists several computer file paths that I recognize as being files on my
26 own computer and that contain my personal and confidential records and and
27 data.
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- 1 8. In particular, Exhibit B (i.e., “BUNGIE_WDWA_0000409.XLSX”) shows that
2 on December 17, 2019, file “g:\work files\reclass\x64\plugins\
3 reclasskernel64.sys” was identified by Bungie as an AimJunkies related binary.
4 The file described by Bungie is a file that exists on an external hard drive
5 attached to my personal computer. As stated in Paragraph 3 above,
6 “reclasskernel64.sys” is an original work of authorship created by me and I
7 own a copyright in that file.
- 8 9. The file “reclasskernel64.sys” is described in the document
9 (BUNGIE_WDWA_0000367) dated 2018 (Dkt#67-1, pp. 9-10) and shows a
10 file path (C:\Users\james\Desktop\ReClass.NET-KernelPlugin-master\bin\
11 ReClassKernel64.pdb) which is another file on my personal computer. This
12 file is associated with the creation of, but is not necessary in the regular use of
13 (reclasskernel64.sys). A .pdb file describes the specifics of a program's
14 structure which are useful for analysis and debugging but unnecessary for the
15 program to be run by the computer. Again, this file is an original work of
16 authorship created by me, and I own a copyright in that file.
- 17 10. This document (Dkt#67-1, pp. 9-10) produced by Bungie in this matter, also
18 shows that the file (reclasskernel64.sys) was signed by Phoenix Digital Group
19 LLC. The digital signature for a signed file is stored within the file that is
20 signed. This demonstrates that Bungie was accessing files related to Phoenix
21 Digital Group LLC resident on my computer. As noted in Paragraph 5 above,
22 Phoenix Digital Group LLC is the author and creator of these files and owns
23 copyrights in them.
- 24 11. Bungie could have only obtained this string for the pdb file path by obtaining
25 access to, opening and copying the contents of the file (reclasskernel64.sys)
26 themselves. When a .pdb file is generated, the original path to it is stored
27 within the resulting binary (.sys) file. Bungie claims they can access file hashes
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1 and file paths from a process that attaches to their process. The fact is this file
2 ((C:\Users\james\Desktop\ReClass.NET-KernelPlugin-master\bin\
3 ReClassKernel64.pdb)) never attaches to the Destiny 2 process at any time,
4 and cannot possibly be started as a Windows process as a .pdb file is not
5 executable, so Bungie could not have obtained this information without
6 directly opening and accessing the contents of the file (reclasskernel64.sys).
7 Additionally, the specifics of the digital signature for this file
8 (reclasskernel64.sys) would only have been available to Bungie if Bungie had
9 accessed the contents of the file directly or Bungie had employed methods to
10 query information about other programs running on the system not directly
11 available from within the Destiny 2 process. I was not aware of this possibility
12 of information gathering when I agreed to the terms of the Bungie LSLA.

13 12. I observed and heard the deposition of Bungie's Engineering Lead, Dr. Edward
14 Kaiser, taken by my counsel on October 4 and 5, 2022. Dr. Kaiser had
15 previously filed a Declaration on Bungie's behalf in this matter (Dkt#36).

16 13. During his deposition, Dr. Kaiser testified that Bungie obtained additional
17 information describing the nature of files known to VirusTotal by using
18 VirusTotal's search feature to crosscheck files using hashes obtained from
19 metadata available within the Destiny 2 process. The file "reclasskernel64.sys"
20 Bungie claims to have crosschecked with VirusTotal was first uploaded to
21 VirusTotal on 3-8-22. Again, the file "reclasskernel64.sys" is an original work
22 of authorship I created. This file has been stored only on my personal
23 computer and has never been made public.

24 14. Bungie also accessed information from my private work folder on my external
25 drive according to their reports on (BUNGIE_WDWA_0000409.XLSX) with
26 the file path (g:\work files\). It is unknown what else Bungie might have
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1 accessed or copied from my private work folders which contain proprietary
2 technology and trade secrets known only to me.

3 15. I am familiar with Bungie's Terms of Service ("LSLA") as well as the
4 "(privacy policy)" referenced therein. After reading these documents, I
5 reasonably understood that the data to be collected by Bungie would my ip
6 address, hardware information, username, playtime, rank, score, experience per
7 match, how long I played, dates and times played, platform used (namely,
8 "PC,Playstation,XBOX"). Never did i think I would have to worry about
9 Bungie digging into my personal, work related, and proprietary files and
10 reading file information not readily available to anyone else other than myself.
11 Nor did Bungie ever notify me or otherwise give me fair notice that it would
12 do such things.

13 16. As a result of this breach of security by Bungie, I have been forced to purchase
14 a new computer to ensure any traces of the invasive malware that was used
15 without my consent has been completely removed. I have spent in excess of
16 \$2702 purchasing new computers and drives, and I have spent in excess of 40
17 hours reviewing files for indication of compromise, cleaning such files when
18 detected, and getting the new computer set up and ready for work. As the fair
19 value of my time is approximately \$75 per hour, my direct monetary damage
20 as a result of Bungie's improper accessing of my computer and files contained
21 thereon exceeds \$5000. I incurred these expenses between May 28, 2022 and
22 June 15, 2022. This does not include the additional time and expense incurred
23 in defending myself against Bungie's false accusation that I created, developed


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1 or otherwise assisted in producing the “cheat software” at issue in this matter,
2 which I did not.

3 Dated August 7, 2023.

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5 James May
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